

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

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:
: Master File No. 12-md-02311
: Hon. Marianne O. Battani
:

THIS DOCUMENT RELATES TO:

Product(s): Wire Harnesses

ALL DEALERSHIP ACTIONS
ALL END-PAYOR ACTIONS

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:
: W:12-cv-00102-MOB-MKM
: W:12-cv-00103-MOB-MKM
:
:

**END-PAYOR PLAINTFFS AND AUTOMOBILE DEALERS' OPPOSITION TO
DEFENDANT KYUNGSHIN-LEAR'S MOTION TO CERTIFY ORDER FOR
INTERLOCUTORY APPEAL ACCORDING TO 28 USC 1292(B) AND FOR A STAY OF
PROCEEDINGS PENDING APPEAL**

COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. Should the Court deny Kyungshin-Lear Sales and Engineering, LLC's ("KL-Sales") motion to certify for immediate appeal under 28 U.S.C. §1292(b) the question of whether the Court correctly applied Fed. R. Civ. P. 8 and the *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) standards when it denied KL-Sales' motion to dismiss the End-Payor Plaintiffs and Automobile Dealers' Consolidated Amended Class Action Complaints, when there is no ground for a substantial difference of opinion regarding the question, the question is not one of first impression, and certifying the question would not materially advance the termination of the litigation?

2. Should the Court deny KL-Sales' stay request when it is unlikely that the Sixth Circuit would reverse the Court's order denying KL-Sales' motions to dismiss and KL-Sales will not be irreparably harmed if a stay is not granted?

After considering hundreds of pages of briefing and holding two days of oral argument, the Court issued 10 separate Opinions and Orders totaling 157 pages, which thoughtfully analyzed and addressed each of the Defendants' numerous motions to dismiss the Direct Purchaser, End-Payor and Automobile Dealer Plaintiffs' respective Consolidated Amended Class Action Complaints ("CACs"). The Court sustained virtually all of the claims set forth in the CACs, including the claims asserted by End-Payor Plaintiffs and Automotive Dealers ("IPPs") against Defendant, Kyungshin-Lear Sales and Engineering, LLC ("KL-Sales").

Unhappy with the result, KL-Sales asks the Court to certify its Order and Opinion denying KL-Sales' motion to dismiss ("Dismissal Order") for interlocutory appeal pursuant to 28 U.S.C. §1292(b). As set forth in Plaintiffs' Collective Opposition to Defendant Lear Corporation's Motion to Certify Order for Interlocutory Appeal Pursuant to 28 U.S.C. §1292(b) ("Lear Opposition")¹, because the extraordinary circumstances required for §1292(b) certification are absent, KL-Sales motion should be denied. Indeed, KL-Sales motion is simply a rehash of the arguments it raised in its motion to dismiss, each of which was considered and properly rejected by the Court.

In its Dismissal Order, the Court held that, contrary to KL-Sales' arguments, the Court must read the CACs as a whole. *Id.* at 5 (citing *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962)). Accordingly, the Court found that IPPs' allegations of: (1) numerous guilty pleas in which defendants admitted to meeting and agreeing to allocate supply, rig bids and fix price of Automotive Wire Harness Systems; (2) the existence of explicit agreements to restrain trade; (3) market conditions open to collusion; (4) the strength of defendants in the market place; and (5) opportunities for defendants to conspire sufficiently "advance a claim against K-L Sales that it participated in a conspiracy in restrain[t] of trade or

¹ IPPs incorporate by reference the arguments raised by Plaintiffs in the Lear Opposition.

commerce.” *Id.* at 5.

In short, the Dismissal Order concisely analyzed the applicable law – *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) – and applied it to the facts at issue. That KL-Sales is unhappy with the Court’s conclusion does not constitute the extraordinary circumstances required for §1292(b) certification. *Babyage.com, Inc. v. Toys “R” US, Inc.*, No. 05-6792, 2008 U.S. Dist. LEXIS 53918, at *63-67 (E.D. Pa. July 15, 2008) (quarrels over the district court’s application of the correct legal standard do not serve as a valid basis for a §1292(b) interlocutory appeal); *Flying J. Inc. v. TA Operating Corp.*, No. 1:06-CV-30-TC, 2007 U.S. Dist. LEXIS 85613, at *4 (D. Utah Nov. 20, 2007) (denying defendants’ motion for certification of a dismissal order for interlocutory appeal where “Defendants do not disagree that *Twombly* provides the correct legal standard. Rather, they disagree with the court’s interpretation and application of *Twombly* to the allegations of Plaintiffs’ complaint”); *First Am. Corp. v. Al-Nahayan*, 948 F. Supp. 1107, 1116 (D.D.C. 1996) (“Mere disagreement, even if vehement, with a court’s ruling on a motion to dismiss does not establish a ‘substantial ground for difference of opinion’ sufficient to satisfy the statutory requirements for an interlocutory appeal.”).

Accordingly, for the reasons set forth herein and for those set forth in the Lear Opposition, IPPS respectfully submit that KL-Sales’ motion for interlocutory appeal of the Dismissal Order be denied.

Dated: July 22, 2013

Respectfully submitted,

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